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10 UNITED STATES DISTRICT COURT OF CALIFORNIA

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 (SAN FRANCISCO DIVISION)

13

14 VINCENT KAMYAR VAGHAR,

15 Plaintiff,

16 v.

17 DAVID J. KILLIAN; ANTHONY M.  
18 MAROTTA; and ROSA COURT, LLC, a New  
19 Jersey limited liability company,

20 Defendants.

CASE NO. C 07 4083 EDL

FIRST AMENDED COMPLAINT FOR  
BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

1 Plaintiff Vincent Kamyar Vaghar (“Vaghar”) alleges for his complaint against David J.  
 2 Killian (“Killian”); Anthony M. Marotta (“Marotta”); and Rosa Court, LLC, a New Jersey limited  
 3 liability company (“Rosa Court”) (collectively, “Defendants”) as follows:

4 **The Parties**

5 1. Plaintiff Vaghar is a domiciliary of California.  
 6 2. On information and belief, Defendant Killian is believed to be a domiciliary of  
 7 Pennsylvania.  
 8 3. On information and belief, Defendant Marotta is believed to be a domiciliary of New  
 9 Jersey.  
 10 4. On information and belief, Defendant Rosa Court is and at all times has been a New  
 11 Jersey limited liability company, with its principal place of business in Philadelphia, Pennsylvania.

12 **Jurisdiction, Venue, and Intradistrict Assignment**

13 5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332.  
 14 6. This Court has personal jurisdiction over each Defendant, because each Defendant  
 15 has purposefully availed himself or itself of the benefits and protections of this jurisdiction.  
 16 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.  
 17 8. This action is properly assigned to the San Francisco Division of this Court because a  
 18 substantial part of the events which give rise to the claim occurred in San Mateo County, California.

19 **Factual Allegations**

20 9. On or about May 31, 2005, Vaghar agreed to loan \$325,000 to Killian and Marotta  
 21 against their condominium project named Project Rosa Court Townhomes, located at the  
 22 intersections of Federal and Juniper Streets and Federal and Clarion Streets in Philadelphia,  
 23 Pennsylvania (the “Condo Project”). The parties executed a promissory note and personal guaranty.  
 24 The promissory note required that the “the unpaid principal and accrued interest shall be payable in  
 25 full on May 31, 2006 (the “Due Date”).”

26 10. In or about May 2005, Vaghar caused \$325,000 to be transferred to Defendants via  
 27 wire transfers.

11. Defendants failed to pay the principal and accrued interest to Vaghar by May 31, 2006 as required by the promissory note.

12. On October 15, 2006, Vaghar entered into the Agreement for Settlement of Debt (“Settlement Agreement”) with Killian and Marotta, pursuant to which Vaghar agreed to discharge Killian and Marotta’s debt in exchange for the conveyance of condominium unit number 11 (the “Unit”) at the Condo Project “free and clear of any liens and indebtedness.” A copy of the Settlement Agreement is attached as Exhibit A.

13. Paragraph 1.4(ii) of the Settlement Agreement states:

Right to Specific Performance. If Debtors default in their obligation to cause the LLC to convey the Unit (or a Substitute Unit) to [Vaghar] as provided in this Agreement by [January 31, 2007], then [Vaghar] will have the right to seek specific performance of Debtors' obligations to so to [sic] convey and record a lis pendens against the Unit (or the Substitute Unit). In this regard, the specific performance action will also be against the LLC.

14. Defendants failed to convey the Unit to Vaghur by January 31, 2007, in breach of the Settlement Agreement. In addition, Defendants failed to convey the Unit to Vaghur “free and clear of any liens and indebtedness,” in further breach of the Settlement Agreement.

15. These breaches negatively impacted Vaghars business causing him to lose investment opportunities.

16. Defendants' breaches of the Settlement Agreement caused Vaghar to suffer damages in the form of compensatory damages and lost profits, amounting to at least \$75,001 and as much as several hundreds of thousands of dollars.

## **First Cause of Action – Breach of Contract**

17. Vaghar re-alleges and incorporates herein all preceding paragraphs.

18. Vaghari, Killian and Marotta entered into the Settlement Agreement as described above.

19. Vaghar has duly performed all the conditions of the Settlement Agreement on his part.

20. Defendants breached the Settlement Agreement, as described above, by (*inter alia*) failing to convey the Unit to Vaghar by January 31, 2007 and failing to convey the Unit to Vaghar “free and clear of any liens and indebtedness.”

21. As a direct and proximate cause of Defendants' breaches, Vaghar has sustained significant damages, including both compensatory damages and lost profits, amounting to at least \$75,001 and as much as several hundreds of thousands of dollars.

## Prayer

Wherefore, Plaintiff Vaghar prays judgment against Defendants as follows:

1. that Defendants should be adjudged to have committed the breaches detailed above;
2. that Defendants be ordered to specifically perform the Settlement Agreement by conveying the Unit to Vaghar “free and clear of any liens and indebtedness” within 10 days of entry of judgment;
3. that Defendants be ordered to pay damages adequate to compensate Vaghar for those breaches;
4. that Defendants be ordered to pay Vaghar for his lost profits caused by Defendants’ breaches of the Settlement Agreement;
5. that Defendants be ordered to pay pre-judgment and post-judgment interest;
6. that Defendants be ordered to pay Vaghar’s attorneys’ fees and costs in this matter;

and

7. that Vaghar be awarded such other and further relief as the Court deems just and proper.

Dated: August 14, 2007

## HOLME ROBERTS & OWEN LLP

By: /s Kyle L. Schriner  
KYLE L. SCHRINER  
Attorneys for Plaintiff  
Vincent Kamyar Vaghari

**Demand For Jury Trial**

Plaintiff Vincent Kamyar Vaghar hereby demands a jury trial.

Dated: August 14, 2007

# HOLME ROBERTS & OWEN LLP

By: /s Kyle L. Schriner  
KYLE L. SCHRINER  
Attorneys for Plaintiff  
Vincent Kamyar Vaghar